May 28, 2004

Mr. W. Kenneth Ferree
Chief, Media Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Ex Parte Communication in MB Docket No. 04-59 (Digital Output Protection Technology and Recording Method Certifications: SmartRight)

Dear Mr. Ferree:

On March 1, 2004, Thomson, on behalf of its SmartRight Partners (collectively, "SmartRight Applicants"), filed a Broadcast Flag Certification for the SmartRight digital content protection system ("SmartRight"), seeking FCC approval for use in protecting Marked and Unscreened digital broadcast content in conformance with the Commission's interim process rules.[1]

On April 7, 2004, the Motion Picture Association of America, Inc. ("MPAA") and its member companies ("MPAA Parties") filed an Opposition to SmartRight, citing the need for additional information and/or clarification on a number of issues.[2] Some of these issues, including concerns regarding SmartRight's ability to achieve sufficient "localization" of Marked and Unscreened content, as well as the role of content owners in change management procedures and the initiation and enforcement of revocation and renewal, focused specifically on SmartRight. Other issues were common to virtually all Broadcast Flag Certifications on which MPAA commented, including those supported by MPAA Parties, including: (1) the need to assert upstream controls over downstream HDCP functions; (2) assurance that licensors would be bound by the terms of the adopter's license to the same extent as other manufacturers; and (3) clarification that no obligations will be imposed on content providers, broadcasters and consumers by virtue of the Broadcast Flag.

On April 16, 2004, SmartRight Applicants responded to MPAA Parties, addressing each of the concerns previously raised, and provided additional information and clarifications regarding the MPAA concerns outlined above, the operation of the SmartRight system, and the rights of content

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[1] *In the Matter of Digital Output Protection Technology and Recording Method Certifications: SmartRight*, MB Docket No. 04-59 (Mar. 1, 2004) ("*SmartRight Certification"*).

[2] *SmartRight Certification,* Opposition of the Motion Picture Association of America, Inc., *et al.* (Apr. 7, 2004) ("*MPAA Parties' Opposition*").

providers and broadcasters.[3] In connection with this last issue, SmartRight Applicants submitted a proposed Content Participant Agreement for the record. Thomson and MPAA also have engaged in a productive dialogue following the April 16th submission. One critical result of these discussions is agreement on the specific parameters defining SmartRight's initial proximity content controls. Specifically, SmartRight Applicants and MPAA have jointly agreed on the following initial proximity content control mechanisms and parameters.

At a minimum, SmartRight local proximity detection will include:(i) setting the Internet Protocol (IP) packet header parameter Time to Live (TTL) to 3 in all transmitted IP packets of Marked or Unscreened Content output from a Covered Product source device; (ii) confirmation that any Internet Protocol (IP) packets of Marked or Unscreened Content received by a Covered Product sink device have an IP Time to Live (TTL) parameter value of no greater than 3; and (iii) confirmation by the Covered Product source device for any transmission of Marked or Unscreened Content (including over point-to-point wired connections) that one valid measurement of a Round Trip Time (RTT) of 7 milliseconds or less has been made between itself and the Covered Product sink device prior to completing the sink device's authentication request. Time to Live (TTL) is defined in Internet Standard RFC 791 STD 5.

The measurement of Round Trip time (RTT) by a Covered Product source device will occur: (a) after power-up of the Covered Product source device when an active Covered Product sink device requests authentication; (b) when the last transmission of content-based packet traffic between a Covered Product source device and sink device has occurred more than 120 minutes prior; and (c) when the last successful RTT measurement of 7 milliseconds or less between a Covered Product source and sink device has occurred more than 24 hours prior.

The determination of RTT will be measured using a cryptographically secure protocol to prevent any form of spoofing and to ensure that only the authenticating Covered Product sink device receiving the protected content can respond to the RTT measurement message. A Covered Product source device will attempt the measurement of RTT until it achieves a single valid measurement of 7 or fewer milliseconds or determines that this requirement cannot be met and completion of authentication is halted. Thus, the RTT measurement will be the minimum RTT value measured and not the average of all RTT values measured.

Both parties believe that the authorization of remote access raises numerous interrelated and complex business, legal, and technological issues that require careful FCC consideration. Therefore, the parties agree that until those issues can be addressed appropriately, SmartRight's initial

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[3] *SmartRight Certification,* Reply of SmartRight Applicants to the Opposition of the Motion Picture Association of America, Inc., *et al.* (Apr. 16, 2004) ("*SmartRight Reply*"), Appendix B.

implementation will conform to the parameters described above and in the *SmartRight Reply* to limit redistribution to networking within the proximity of the home.

In addition to committing to obligate users of the SmartRight system to implement the above TTL and RTT requirements, Thomson has agreed to work with the MPAA and its members to develop even more effective technological means of achieving proximity control in future versions of the SmartRight system. This commitment to continue working on this difficult -- but vital -- technological challenge is a key consideration for the MPAA and its members in supporting the SmartRight system, just as it has been -- and will continue to be -- in MPAA support of other proposed Interim or Final authorized digital transmission or recording technologies.

Accordingly, based upon the SmartRight Applicants' written commitments and responses reflected in the *SmartRight Reply* and this letter, MPAA now supports the authorization of the SmartRight content protection technology as part of the Commission's interim process rules (pursuant to 47 C.F.R. Section 73.9008) and, together with Thomson, jointly requests that the Commission expeditiously approve SmartRight as an Authorized Digital Output Protection Technology and as an Authorized Recording Method for use in protecting Marked and Unscreened Content.

Respectfully submitted,

C. Bradley Hunt
Sr. Vice President,
Chief Technology Officer
Motion Picture Association of America, Inc.
15503 Ventura Blvd.
Encino, CA 91436
(818) 995-6600

David H. Arland
Vice President, U.S. Corporate Communications
and Government Relations
Thomson Inc.
P.O. Box 1976, INH-430
Indianapolis, IN 46206-1976
(317) 587-4832

cc: Marlene Dortch
William H. Johnson
Rick C. Chessen
Susan Mort